



2015-022

STATE OF ALABAMA
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December 19, 2014

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Honorable William A. Meehan
President, Jacksonville State University
700 Pelham Road North
Jacksonville, Alabama 36265-1602

Colleges and Universities – State
Employees – Per Diem Expense Allowance
– Travel Expenses

An employee of Jacksonville State University (“University”) traveling overnight from the employee’s base on one satellite campus to another satellite campus is entitled to full per diem, even if the University provides free overnight accommodations and an office at the campus the employee is visiting.

Dear Dr. Meehan:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

(1) Is an employee of Jacksonville State University who was away from the employee’s base overnight, but afforded housing at no charge on University property at the employee’s destination, entitled to full or partial (daily meal allowance) per diem?

(2) Would the answer be different if the employee has an official office at the site of the overnight stay, but the office is not the employee’s designated base?

FACTS AND ANALYSIS

Your request states as follows:

Jacksonville State University, located principally in Jacksonville, has satellite campuses in Cleburne County (Mountain Resource Center), Etowah County (Gadsden State Community College), Ft. Payne (Little River Canyon Center), and McClellan (formerly Ft. McClellan) in Anniston. The University Foundation ("JSUF"), a 501(c)(3) nonprofit directly associated with the University, owns a structure at the Little River Canyon Center ("LRCC") where a University employee may stay overnight while on LRCC business at no charge.

An employee has filed a travel reimbursement request claiming overnight per diem for one or more nights while being lodged at the JSUF facility. The employee has an office on all four satellite campuses but is based at the McClellan campus.

The Office of Internal Audit and External Funds Compliance has questioned the propriety of paying per diem (as opposed to a meal allowance) in these circumstances.

The Department of Examiner of Public Accounts has suggested that an opinion of the Attorney General would be the appropriate manner to address this concern. The University has been advised full payment of this claim is subject to inquiry during the University's annual audit.

Counsel for the University has likewise advised that A.G. No. 88-00340, by logical extension, indicates that, under the instant facts, payment of full per diem rather than a day's meal allowance would be inappropriate. Counsel has also advised that state ethics laws compound the complexity of this inquiry by requiring a consideration of whether full per diem results in personal gain.

Section 36-7-20 of the Code of Alabama, which provides for the meals and per diem for in-state travel for state employees, states, in pertinent part, as follows:

(a) Except as otherwise provided in Section 36-7-21, the amount allowable to a person traveling inside the State of Alabama in the service of the state or any of its departments, institutions, boards, bureaus, commissions, councils, committees, or other like agencies for expenses other than transportation may be fixed by the Governor at not less than seventy-five dollars (\$75) per day, and this amount shall be uniform in operation as to all persons traveling within the state on official business.

(b) No travel allowance shall be paid for a trip of less than six hours' duration. For travel which does not require an overnight stay, the traveler shall be paid a meal allowance of 15 percent of the regular per diem rate for a trip of from six to 12 hours' duration, and for travel in excess of 12 hours' duration, the traveler shall be paid one meal allowance and one-fourth of the per diem allowance.

ALA. CODE § 36-7-20 (2013).

This Office has explained that section 36-7-20(a) requires that "officers and employees are paid a per diem rate of not less than [\$75.00] when traveling overnight." Opinion to Honorable Tom Butler, House of Representatives, dated August 31, 1992, A.G. No. 92-00395 at 3. Section 36-7-20(b) "entitles a state employee to receive a meal allowance when the employee takes a trip outside of the city where the employee's base is located and that trip lasts for more than 6 hours." Opinion to Honorable Richard F. Allen, Commissioner, Department of Corrections, dated January 6, 2009, A.G. No. 2009-030 at 5.

You question the applicability of our opinion to Honorable Ralph W. Adams, Chancellor, Troy State University, dated June 30, 1988, A.G. No. 88-00340, to the present matter. That opinion stated that a state employee may not claim a meal allowance for a meal that has been provided at no cost. The *Adams* opinion, however, is distinguishable because it did not address per diem.

Per diem is governed by the *Butler* opinion and our opinion to Honorable Lucy L. Baker, Member, House of Representatives, dated July 24, 2003, A.G.

No. 2003-198. As the *Baker* opinion emphasized, per diem “must be in the manner provided by the Code of Alabama, and the respective agencies have no discretion in this matter.” *Id.* at 3. The *Butler* opinion determined that an employee is entitled to the full per diem, even when it exceeds actual expenses. The *Baker* opinion reached the same conclusion in the converse, holding that reimbursement could not be made in excess of the statutory per diem. Further support for this conclusion is found in our opinion to the Honorable C. W. Moody, State Forester, Alabama Forestry Commission, dated November 3, 1986, A.G. No. 87-00040, which opined as follows:

However, the per diem expense allowance is not part of the compensation due an employee; it is a ***method of reimbursement for expenses he is expected to incur*** because his duties require him to travel. He may choose to spend more than the amount fixed, indeed, for instance, if he cannot find lodging at a relatively inexpensive facility he may have to spend more than he is reimbursed. ***On the other hand, he may skip a meal, stay at an inexpensive facility or with friends or relatives and thus not incur expenses as great as his reimbursement.***

Id. at 3-4 (emphasis added).

Finally, an employee simply having a regular office where the employee is visiting has no bearing on travel reimbursement. The employee’s base is the determining factor. The travel provisions become operative when an employee travels away from the base. Department of Finance, *Fiscal Policy and Procedures Manual*, Section 6-5F (rev. 10/2011). Consistent with these authorities, a University employee is entitled to full per diem, even if free accommodations and an office are provided by the University or any other person or entity at the employee’s destination. This Office does not opine on ethical issues and advises you to seek an opinion from the Alabama Ethics Commission.

CONCLUSION

An employee of Jacksonville State University traveling overnight from the employee’s base on one satellite campus to another satellite campus is entitled to full per diem, even if the University provides free overnight accommodations and an office at the campus the employee is visiting.

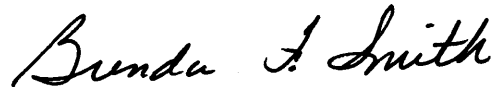
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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

LUTHER STRANGE
Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

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